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OPINION NO. 2024-04

BROKER-DEALERS; CORPORATIONS; FRANCHISES; LICENSES; MOTOR VEHICLES; SALES; AND SMALL BUSINESSES: Nevada law does not directly address whether wholly owned subsidiaries of manufacturers may obtain new vehicle dealer licenses. But the legislative history of the relevant statutes points to a general rule that manufacturers may not bypass the franchise system, regardless of whether such manufacturers have a previously established sales presence in Nevada, and regardless of whether such wholly owned subsidiaries are classified as "representatives."

Tonya Laney, Director
Department of Motor Vehicles
555 Wright Way
Carson City, NV 89711

Dear Director Laney,

Pursuant to NRS 228.150, you have requested an opinion from this office regarding certain provisions within NRS 482.36311 to 482.36425, Nevada's statutes relating to franchises for sales of motor vehicles. Your first question asks if a wholly owned subsidiary of a vehicle manufacturer may obtain a new dealer license if such manufacturer has no previously established sales presence in Nevada. Your second question asks whether a wholly owned subsidiary of a vehicle manufacturer qualifies as a "representative" under NRS 482.36345, and if not, whether such wholly owned subsidiary may obtain a new dealer license. Your third question asks whether a private right of action is available for parties aggrieved by the subject statutes.

BACKGROUND

The central issue addressed by your questions is whether new dealer licenses can be issued to wholly owned subsidiaries of vehicle manufacturers in certain circumstances.

Regarding the sale of vehicles, Nevada has historically operated under a "franchise" system. A franchise is defined, in relevant part, as a written agreement between a manufacturer and a dealer by which the dealer "is granted the right to offer and sell at retail new vehicles . . . ." NRS 482.043(2).

Chapter 482 of the Nevada Revised Statutes ("NRS") sets out the laws that govern manufacturers, dealers, and various other entities involved in the licensing, registration, sale, and lease of motor vehicles in Nevada. NRS 482.36311 to 482.36425 specifically govern franchises for the sale of motor vehicles.

Manufacturer is defined as "every person engaged in the business of manufacturing motor vehicles, trailers or semitrailers." NRS 482.060. A dealer is any person who "[f]or compensation, money or other thing of value sells, exchanges, buys, offers or displays for sale, negotiates or attempts to negotiate a sale or exchange of an interest in a vehicle . . . ." NRS 482.020(1)(a). A new vehicle dealer is specifically licensed to "sell new vehicles" and acquire "new or new and used vehicles for resale." NRS 482.078(1). To obtain a new vehicle dealer license, a dealer must first furnish to the Department of Motor Vehicles "an instrument executed by or on behalf of the manufacturer certifying that the dealer is an authorized franchised dealer for the make or makes of vehicle concerned." NRS 482.350(1)(a). New vehicle dealers are authorized to sell at retail "only those new vehicles for which they are certified as franchised dealers by the manufacturer." NRS 482.350(1)(b).

Thus, Nevada's statutory framework provides that manufacturers are to engage in the activity of manufacturing vehicles and dealers are to engage in the activity of selling them. The only exception to this general rule is found in NRS 482.36349, which allows certain manufacturers to qualify as new vehicle dealers. Two categories of manufacturers fall within this exception. The first is manufacturers that "[o]nly manufacture[] passenger cars powered solely by one or more electric motors[.]" NRS 482.36349(1)(a). These manufacturers may only sell at retail "new or new and used passenger cars that [they] manufacture[,]" NRS 482.36349(1)(b), and must have been "selling such passenger cars at retail in [Nevada] on or before January 1, 2016." NRS 482.36349(1)(c). The second category exception is manufacturers that

"manufacture[] fully autonomous vehicles in [Nevada] that are operated exclusively by an automated driving system[,]" NRS 482.36349(2)(a), and are "selling such fully autonomous vehicles in [Nevada] to another legal entity under common control with the manufacturer." NRS 482.36349(2)(b).

QUESTION ONE

Under NRS 482.36385, is the Nevada Department of Motor Vehicles ("DMV") prohibited from issuing a new dealer license to a dealer that happens to be a wholly owned subsidiary of a vehicle manufacturer, when that manufacturer has no previously established sales presence within the State of Nevada?

SHORT ANSWER

Nevada law does not yet directly address the question of whether wholly owned subsidiaries of manufacturers may obtain new vehicle dealer licenses. Such a practice is not explicitly prohibited by statute. But the practice would circumvent many of the relevant statutes and undermine Nevada's current franchise framework. Nevada law is also ambiguous as to whether manufacturers with no previously established sales presence in the State may sell directly to consumers.

A review of the relevant legislative history and the existence of the NRS 482.36349 exception points to a general rule that manufacturers may not bypass the franchise system (unless they fall within the NRS 482.36349 exception). This general rule should hold true even if a manufacturer has no preexisting dealers in the State.

Chapter 482 of the NRS, and NRS 482.36311 to 482.36425 in particular, outline a franchise framework within which motor vehicles may be sold in Nevada. Allowing wholly owned subsidiaries of manufacturers to qualify for new vehicle dealer licenses, regardless of a preexisting sales presence or status as a "representative," conflicts with the legislative intent of Chapter 482 and wrongfully circumvents Nevada's current franchise framework.

ANALYSIS

Whether wholly owned subsidiaries of manufacturers may obtain new vehicle dealer licenses has not been specifically addressed by the legislature. Nevada courts likewise have not yet addressed the issue.

As a threshold matter, Chapter 482 does not define the terms "subsidiary" and "wholly owned subsidiary," nor does the corresponding chapter of the Nevada Administrative Code. Other sources can provide guidance, however. Title 7 of the NRS, which deals with business associations, defines a "subsidiary" of a resident domestic corporation as "any other entity of which a majority of the voting power is held, directly or indirectly, by the resident domestic corporation." NRS 78.431. Title 17 of the Code of Federal Regulations, which deals with commodities and securities exchanges, defines a "wholly owned subsidiary" as "a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly owned subsidiaries." 17 CFR § 230.405. Subsidiaries are thus separate legal entities from their parent companies. Here, a wholly owned subsidiary of a manufacturer would be a separate entity whose voting securities are completely owned by its parent manufacturer company.

Statutory Analysis

There is no statutory language that explicitly prohibits manufacturers from creating subsidiaries which could then apply for, qualify, and operate as new vehicle dealers.[1] The legislature could have drafted a statute similar to NRS 482.36387, explicitly prohibiting manufacturers from acting as new vehicle dealers indirectly through subsidiaries, but did not do so.

The lack of statutory language explicitly addressing new vehicle dealer licenses does not mean that issuing new vehicle dealer licenses to wholly owned subsidiaries of manufacturers is permitted under Nevada law. Granting new dealer licenses to wholly owned subsidiaries of manufacturers would conflict

[1] The only mention of the word "subsidiary" in the relevant statutes is in NRS 482.36387, which deems it an unfair practice for a manufacturer, or a subsidiary "under common control with a manufacturer," to own or operate repair facilities except to repair their own vehicles or to do service work that is required by law. The legislature intended this language to prevent manufacturers from competing with dealers. *See* Minutes of the Assembly Committee on Transportation, 70th Session, May 6, 1999 (Statement of John Sande, III, representing Nevada Franchised Auto Dealers Association) ("The manufacturer should not compete with the dealer, as such the bill would prohibit manufacturers from directly or indirectly acquiring an interest in any dealership or repair facility in Nevada."). Thus, the legislature has expressly prohibited manufacturers from participating in an activity reserved for dealers: operating repair facilities.

with the State's franchise framework as a whole, thus undermining the intent of the Nevada Legislature. Chapter 482, particularly NRS 482.36311 to 482.36425, establishes a well-defined relationship between manufacturers and dealers, describing their individual roles and the rights each has in relation to the franchise activities in which they engage. Allowing manufacturers to create subsidiary companies to act as new vehicle dealers would circumvent these statutes and undermine the State's existing franchise scheme.

Legislative History

Nevada statutory law is unclear as to whether manufacturers themselves may sell vehicles directly to consumers as long as they do not have a previously established sales presence in Nevada. In cases of statutory ambiguity, Nevada courts will examine legislative history to determine the intent of the statutes at issue.

NRS 482.36385(1) establishes that it is an unfair practice for a manufacturer, directly or through any representative, to "[c]ompete with a dealer." The statute outlines certain situations in which a manufacturer would not be deemed to be in competition with a dealer, none of which are relevant here. There is no further explanation as to what would constitute competition. When a statute is ambiguous, "the intent of the drafters becomes the controlling factor in statutory interpretation." *State ex rel. Harvey v. Second Judicial Dist. Court*, 117 Nev. 754, 770 (2001). Ambiguous statutes should be construed "'in line with what reason and public policy would indicate the legislature intended.'" *Id.* (internal citations omitted).

NRS 482.36385 was created in 1977 with the passage of Senate Bill ("SB") 356. The bill was introduced to provide dealers with more protection against stringent franchise agreements which heavily favored manufacturers.[2] The section regarding competition originally read: "It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to...[c]ompete with a dealer in the relevant market area." This means that a manufacturer could not compete with a dealer "within a radius of 10 miles of an existing dealer of the same line and make."

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[2] "Usually, auto dealers are not thought of as consumers, but as it turns out, the kinds of agreements that are forced upon dealers by manufacturers make them consumers with no remedies. The bill creates a new cause of action for judicial decision." Minutes of Senate Commerce & Labor Committee, 59th Session, April 1, 1977 (Statement of William Thornton).

NRS 482.3634. The section was revised in 1999 with the passage of SB 372. The revision removed the "in the relevant market area" language. This was done to "make any competition with a dealer unlawful."[3] John P. Sande, III, representing Nevada Franchised Auto Dealers Association, explained:

> There had been many mergers among manufacturers and increased competition in the past few years. A result had been a desire among the manufacturers to directly compete with their dealers to reduce dealer profit and increase manufacturer profit. The intent behind S.B. 372 was to inform the manufacturers that in Nevada manufacturers should only manufacture vehicles and dealers should sell them. The manufacturer should not compete with the dealer, as such the bill would prohibit manufacturers from directly or indirectly acquiring an interest in any dealership or repair facility in Nevada.[4]

"Selling" is a not an activity within the purview of manufacturers in Nevada statutory law, whereas dealers are explicitly authorized to sell. NRS 482.060 and 482.020. The statutory language makes no distinction for manufacturers without a sales presence in the State. Additionally, the legislative history contains strong language in opposition to manufacturers selling vehicles at all: "in Nevada manufacturers should only manufacture vehicles and the dealers should sell them"; "the bill would prohibit manufacturers from directly or indirectly acquiring an interest in any dealership...." *Id.*

"Statutory provisions should, whenever possible, be read in harmony provided that doing so does not violate the ascertained spirit and intent of the legislature." *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989) (internal citations omitted). Here, though some isolated provisions of the unfair-practices statutes could be read as

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[3] Senate Transportation Committee, Explanation of 1999 Nevada Senate Bill 372, March 23, 1999, Presented by John P. Sande, III.

[4] Minutes of the Assembly Committee on Transportation, 70th Session, May 6, 1999 (Statement of John Sande, III, representing Nevada Franchised Auto Dealers Association) (second emphasis added).

implying that competition necessarily entails a preexisting sales presence in the State,[5] this interpretation would violate the intent of the legislature. As stated above, the relevant legislative history and the existence of the NRS 482.36349 exception, explored more fully below, point to a legislative intent that manufacturers may not bypass the franchise system. Furthermore, NRS 482.36387, one of the unfair-practices statutes, outlines a general prohibition against manufacturers owning and operating repair facilities, an activity reserved for dealers. *See supra* n. 1. This further supports a general rule in Nevada that manufacturers should only manufacture vehicles and dealers should sell them.

The Exception

NRS 482.36349 provides the only explicit exception to the general rule against manufacturers selling directly to consumers. Two categories of manufacturer fall within this exception: certain manufacturers of passenger cars powered solely by one or more electric motors; and certain manufacturers of fully autonomous vehicles. When the legislature expressly "enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *TRW Inc. v. Andrews*, 534 U.S. 19, 28, 122 S.Ct. 441, 447 (2001) (internal citations omitted) (emphasis added). Here, the Nevada Legislature could have included a category for manufacturers that do not have a previously established sales presence within the State, but it did not.

The legislative history provides further context. This exception was created in 2014 with the passage of Assembly Bill ("AB") 2. The bill exempted certain manufacturers "from being required to use franchise dealers to sell their vehicles on the retail market" while "protecting existing and established business structures" by limiting such manufacturers to manufacturers that only sell cars that they manufacture, and by mandating that such manufacturers had to have sold such vehicles in the State on or before January

[5] For example, NRS 482.36385(2) prohibits a manufacturer from discriminating unfairly amongst "its" dealers, and NRS 482.36385(3) makes it an unfair practice for a manufacturer to fail to compensate a dealer fairly for work and services performed pursuant to existing agreements. Additionally, many of the unfair-practices statutes, NRS 482.36371 to 482.36395, appear to assume a preexisting relationship between manufacturers and dealers.

1, 2016.[6] The legislature thus seems to have considered direct sales by a manufacturer with no preexisting dealers in the State a violation of the franchise scheme. Viewed another way, if the absence of preexisting dealers and franchise agreements in the State allowed for any manufacturer to directly sell to consumers, the NRS 482.36349 exception would not have been needed.

In 2021, a bill was introduced that would have allowed manufacturers of electric passenger cars to sell directly to consumers. AB 114 proposed the removal of the "[w]as selling passenger cars at retail in this State on or before January 1, 2016" language. This would have allowed manufacturers of electric passenger cars with no previous sales presence in the State to sell directly to consumers. But AB 114 did not pass. The introduction and subsequent failure of this bill further supports a conclusion that manufacturers may not sell vehicles outside of the franchise framework (unless they fall within the NRS 482.36349 exception), even if they have no previously established sales presence in the State.

QUESTION TWO

Is a wholly owned subsidiary of a manufacturer a "representative" within the meaning of NRS 482.36345, or should that entity be recognized as a separate legal entity from the manufacturer such that it would be eligible for a DMV new vehicle dealer license?

SHORT ANSWER

Pursuant to NRS 482.36385(1), representatives of manufacturers may not compete with dealers. While wholly owned subsidiaries are separate legal entities from their parent companies, that in and of itself does not make such entities eligible for new vehicle dealer licenses. As discussed above, allowing wholly owned subsidiaries of manufacturers to operate as new vehicle dealers would bypass the State's franchise framework in a way the legislature did not intend, regardless of whether such entities are classified as "representatives."

ANALYSIS

As explained above, subsidiaries are separate legal entities from their parent companies. In the case of wholly owned subsidiaries, the entirety of the entity's voting securities is owned by its parent company. As such, the wholly

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[6] Journal of the Assembly of the State of Nevada, 28th Special Session, September 10, 2014 (Statement of Troy Dillard, Director of DMV).

owned subsidiary contemplated by the question would be completely owned and, most logically, controlled by its parent manufacturer company.

NRS 482.36345 describes a "representative" as "any person regularly employed by a manufacturer or distributor for the purpose of negotiating or promoting the sale of the manufacturer's or distributor's new vehicles to dealers or for regularly supervising or communicating with dealers or prospective dealers in this State for any purpose." The terms "employee" and "regularly employed" are not defined. If a subsidiary cannot be classified as a "person regularly employed by a manufacturer[,]" it does not qualify as a "representative," regardless of whether the subsidiary performed the requisite activities described in the statute. A subsidiary thus does not fall under the purview of NRS 482.36385, which prohibits representatives of manufacturers from competing with dealers.

Even as a non-representative, it is unlikely that the Nevada Legislature intended for a wholly owned subsidiary of a manufacturer to be eligible for a new vehicle dealer license. Chapter 482 focuses on the relationship between manufacturers and dealers and delineates the respective activities and roles of each. If manufacturers were allowed to create subsidiary companies purely to operate as dealers, these wholly owned subsidiaries would bypass the franchise framework in a way that contradicts the statute's plain language and violates its intent.

This conclusion is further supported by two provisions of Chapter 482 that address "common control." NRS 482.36387 prohibits subsidiaries or enterprises under common control with a manufacturer or distributor to own or operate repair facilities. This provision explicitly prohibits an indirect "work around" that would allow a manufacturer's subsidiary to act as a dealer. The NRS 482.36349 exception also mentions "common control" in relation to certain manufacturers of fully autonomous vehicles. The autonomous vehicles of NRS 482.36349(2) are meant to remain in the control of the organization that manufactured them. In 2023, SB 182, the bill that would eventually become NRS 482.36349(2) was introduced to create a "path for an autonomous vehicles (AV) manufacturer in Nevada to retain ownership and operate their own vehicles with commercial partners."[7] The exception requires that such vehicles are sold to "another legal entity under common control with the manufacturer." NRS 482.36349(2)(b). This language strongly implies that separate entities

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[7] Minutes of the Meeting of the Assembly Committee on Growth and Infrastructure, 82nd Session, May 9, 2023 (Statement of Senator Marilyn Dondero Loop).

that are under common control with a manufacturer, such as wholly owned subsidiaries, are considered one with the manufacturer and are subject to the same statutory restrictions.

QUESTION THREE

Under NRS 482.36423 to 482.36425, is a private right of action the appropriate remedy available to any person aggrieved by a party who has not willfully violated NRS 482.36311 to 482.36425?

SHORT ANSWER

Any person aggrieved by a violation of NRS 482.36311 to 482.36425 has a private right of action for injunctive relief regardless of whether the violation was willful. Any "dealer or person who assumes the operation of a franchise" pursuant to NRS 482.36396 to 482.36414 has a private right of action for pecuniary damages regardless of whether the violation was willful.

ANALYSIS

NRS 482.36423 and NRS 482.36425 outline potential outcomes for violations of NRS 482.36311 to 482.36425. Specifically, NRS 482.36423 provides remedies for persons aggrieved by such violations, whereas NRS 482.36425 discusses civil penalties and civil suits which may be brought by the State.

"Where the language of a statute is plain and unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." *State, Div. of Ins. v. State Farm Mut. Auto Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) (internal citations omitted). Here, the plain language of Chapter 482 provides an answer to the question.

The word "willfully" only occurs in NRS 482.36425. The statute provides that "[a]ny manufacturer or distributor who willfully violates any provision of NRS 482.36311 to 482.36425, inclusive, is subject to a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation." NRS 482.36425(1). Reading the plain language, the statute only applies to violations by manufacturers and distributors, and such violations have to be willful in order to incur a civil penalty.

NRS 482.36423 provides for two types of remedies: injunctive relief and pecuniary damages. NRS 482.36423(1) states that "[w]henever it appears that a person has violated, is violating or is threatening to violate any provision of NRS 482.36311 to 482.36425, inclusive, any person aggrieved thereby may apply to the district court...for injunctive relief to restrain the person from continuing the violation or threat of violation." Thus, the private right of action for injunctive relief is available to "any person." Additionally, this section applies to violations, or threats of violations, by anyone, not just manufacturers and distributors.

NRS 482.36423(2) provides that "any dealer or person who assumes the operation of a franchise pursuant to NRS 482.36396 to 482.36414, inclusive, who is injured in his or her business or property by reason of a violation of NRS 482.36311 to 482.36425, inclusive, may bring an action in the district court in which the dealership is located, and may recover three times the pecuniary loss sustained by the dealer or person, and the cost of suit, including a reasonable attorney's fee." Under the statute's plain language, therefore, pecuniary damages are only available to dealers or persons who assume the operation of a franchise pursuant to NRS 482.36396 to 482.36414, the statutes that deal with the assumption of a franchise after the death of a dealer or upon the divorce of a dealer.

The legislature's omission of a word or phrase from the plain language of a statute must be honored. "'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Russello v. U.S.*, 464 U.S. 16, 23, 104 S. Ct. 296, 300 (1983) (internal citations omitted). Here, the word "willfully" is only used in relation to civil penalties for violations by manufacturers or distributors. NRS 482.36425(1). The Nevada Legislature purposely excluded the word in NRS 482.36423. A violation or threat of violation of NRS 482.36311 to 482.36425 thus does not have to be willful in order for an aggrieved person to have a private right of action for injunctive relief, or for any dealer or person who assumes the operation of a franchise to have a private right of action for pecuniary damages.

CONCLUSION

The plain language of Nevada statutory law is ambiguous regarding whether wholly owned subsidiaries of manufacturers may be eligible for new vehicle dealer licenses. However, an analysis of the relevant statutes and legislative history favors an interpretation that such subsidiaries should not

be eligible for new vehicle dealer licenses, regardless of whether the manufacturer has a previously established sales presence in the State or whether the wholly owned subsidiary classifies as a "representative."

Regarding violations of NRS 482.36311 to 482.36425, any aggrieved person has a private right of action for injunctive relief and any dealer or person who assumes the operation of a franchise has a private right of action of pecuniary damages, regardless of whether the violations were willful.

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